

(3) The Commission also may consider whether to reduce or not assess a civil money penalty against a small entity, including a small entity otherwise excluded from this policy under paragraphs (a)(1) (i)-(iii) of this section, if the small entity can demonstrate to the Commission's satisfaction that it is financially unable to pay the penalty, immediately or over a reasonable period of time, in whole or in part.

(4) For purposes of this policy, an entity qualifies as "small" if it is a small business or small organization as defined by Commission rules adopted for the purpose of compliance with the Regulatory Flexibility Act.¹ An entity not included in these definitions will be considered "small" for purposes of this policy if it meets the total asset amount that applies to issuers as set forth in §230.157a of this chapter.²

(b) This policy does not create a right or remedy for any person. This policy shall not apply to any remedy that may be sought by the Commission other than civil money penalties, whether or not such other remedy may be characterized as penal or remedial.

[62 FR 16079, Apr. 4, 1997]

¹Pursuant to the Reg. Flex. Act, 5 U.S.C. §601(3), the Commission has adopted appropriate definitions of "small business" for purposes of the Reg. Flex. Act. See 17 CFR 270.0-10, 275.0-7, 240.0-10, 230.157, 250.110, and 260.0-7. The Commission recently proposed amendments to certain of these definitions. *Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933*, Securities Act Rel. No. 7383, 62 FR 4106 (Jan. 28, 1997). The Commission extended the comment period for the proposed amendments to April 30, 1997, 62 FR 13356 (Mar. 20, 1997). Based on an analysis of the language and legislative history of the Reg. Flex. Act, Congress does not appear to have intended that Act to apply to natural persons (as opposed to individual proprietorships) or to foreign entities. The Commission understands that staff at the Small Business Administration have taken the same position.

²At present, this threshold is \$5 million. Thus, non-regulated entities, such as general partnerships, privately held corporations or professional service organizations, with assets of \$5 million or less may qualify for penalty-reduction.

PART 203—RULES RELATING TO INVESTIGATIONS

Subpart A—In General

Sec.

- 203.1 Application of the rules of this part.
- 203.2 Information obtained in investigations and examinations.
- 203.3 Suspension and disbarment.

Subpart B—Formal Investigative Proceedings

- 203.4 Applicability of §§203.4 through 203.8.
- 203.5 Non-public formal investigative proceedings.
- 203.6 Transcripts.
- 203.7 Rights of witnesses.
- 203.8 Service of subpoenas.

AUTHORITY: 15 U.S.C 77s, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

SOURCE: 29 FR 3620, Mar. 21, 1964, unless otherwise noted.

Subpart A—In General

§203.1 Application of the rules of this part.

The rules of this part apply only to investigations conducted by the Commission. They do not apply to adjudicative or rulemaking proceedings.

§203.2 Information obtained in investigations and examinations.

Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public, but the Commission approves the practice whereby officials of the Divisions of Enforcement, Corporation Finance, Market Regulation and Investment Management and the Office of International Affairs at the level of Assistant Director or higher, and officials in Regional Offices at the level of Assistant Regional Director or District Administrator or higher, may engage in and may authorize members of the Commission's staff to engage in discussions with persons identified in §240.24c-1(b) of this chapter concerning information obtained in individual investigations or examinations, including formal investigations